

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Byron Kenneth Anderson,

Civil No. 09-1011 (DWF/RLE)

Petitioner,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Tim Pawlenty, as Governor of the State of Minnesota; Cal Ludeman, as Commissioner of the Minnesota Department of Human Services; and the State of Minnesota,

Respondents.

James E. Ostgard, II, Esq., Ostgard Law Office, counsel for Petitioner.

Matthew Frank and Noah A. Cashman, Assistant Attorneys General, Minnesota Attorney General's Office, counsel for Respondents.

This matter is before the Court upon Petitioner Byron Kenneth Anderson's ("Petitioner") objections to Magistrate Judge Raymond L. Erickson's Report and Recommendation dated March 16, 2010, recommending that the Petition for a Writ of Habeas Corpus be dismissed with prejudice. Specifically, the petition before the Court raised three grounds for relief: (1) a challenge to serialized commitment proceedings in the state courts; (2) due process challenges to the competence and admissibility of certain evidence received and considered by the state courts; and (3) a challenge to the sufficiency of the evidence used to justify the state courts' conclusions that Mr. Anderson

met the statutory criteria as both a Sexual Psychopathic Personality (SPP) and a Sexually Dangerous Person (SDP). The Report and Recommendation before the Court concludes that all three grounds should be rejected and that the petition be dismissed. The objections of the Petitioner address only the third ground for relief, namely, sufficiency of the evidence. The Respondents have declined to respond to the 18-page memorandum of objections submitted by the Petitioner.

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Petitioner's objections.

The Court concludes, as Magistrate Judge Erickson did, that the record contains ample evidence to support the findings of the state district court, as well as the Minnesota Court of Appeals. The record in this case establishes that Petitioner met the criteria for SDP and SPP and, further, that Petitioner was dangerous to the public and in need of secure treatment because of his failure to comply with alcohol treatment and his extended history of harmful sexual conduct. Petitioner has failed to sustain his burden of rebutting the factual determinations of the state court with clear and convincing evidence.

Based upon the above *de novo* review of the record and the objections submitted by Petitioner and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Petitioner Byron Kenneth Anderson's Objections (Doc. No. [14]) to Magistrate Judge Raymond L. Erickson's Report and Recommendation dated March 16, 2010, are **DENIED**.

2. Magistrate Judge Raymond L. Erickson's Report and Recommendation dated March 16, 2010 (Doc. No. [11]), is **ADOPTED** for the reasons stated.

3. The Petition for a Writ of Habeas Corpus (Doc. No. [1]) is **DISMISSED WITH PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: July 28, 2010

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge